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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

SALVADOR GODINEZ, Warden,
Ely State Prison,

Petitioner,

vs.

RICHARD ALLAN MORAN,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Is the standard for competency to waive rights different from the standard for competency to stand trial?

2. Is a state court finding of competency to waive rights a finding of fact protected under 28 U. S. C. § 2254(d)?

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a nonprofit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of the victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The decision below did not pay proper deference to state court findings of competence to waive rights. Furthermore, it imposed an unnecessary new standard of competency for waiver. The decision below, if affirmed, would place serious burdens upon waivers of rights in

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1. CJLF has received written consent from both parties to file this brief.

general and guilty pleas in particular. This is contrary to the rights of victims and society which CJLF was formed to advance. CJLF therefore has an interest in the case.

SUMMARY OF FACTS AND CASE

At 4:30 a.m. on August 2, 1984, respondent Moran and a companion entered the Red Pearl Saloon in Las Vegas, Nevada. Without warning, Moran shot the bartender and the bar's one customer. Both victims died. Nine days later, Moran went to the apartment of his ex-wife where he shot her five times, killing her. Pet. App. B 3. After killing his ex-wife, Moran attempted to commit suicide. *Id.*, at 3-4.

Moran was examined by two psychiatrists to see if he was competent to stand trial. Both psychiatrists who examined him found him competent to be tried. *Id.*, at 4. On November 28, 1984, Moran discharged his counsel and entered guilty pleas to all charges. *Ibid.* Before accepting the guilty plea and waiver of counsel, the trial court extensively canvassed Moran. Pet. 6.

On December 17, 1984, Moran appeared before the trial court *in propria persona*. The judge advised him that it was unwise not to have an attorney and asked him if he wanted to reconsider either of his previous decisions. Moran said no. He also informed the judge that he wanted no witnesses subpoenaed, nor any standby counsel appointed, and no investigation of mitigating circumstances for his penalty phase. Pet. App. B 4-6. On January 21, 1985, a three-judge panel conducted the penalty hearing and sentenced Moran to death. *Id.*, at 6. The Nevada Supreme Court affirmed his plea and sentence. See Pet. App. E.

Moran attacked his competency to plead and waive counsel in both state postconviction proceedings and in the federal district court. He was unsuccessful in all of these efforts. See Pet. App. A 9-10. The Ninth Circuit

accepted Moran's argument, however, and granted habeas corpus relief. On the basis of the appellate record, it found that Moran was not competent to plead guilty. *Id.*, at 11. The Ninth Circuit did not defer to the state post-conviction court's finding that Moran was competent because the federal court felt that the state court applied the incorrect legal standard when determining competency. *Id.*, at 18-20.

SUMMARY OF ARGUMENT

A state court finding that a defendant was competent to waive rights is a finding of fact under 28 U. S. C. § 2254(d).

The state court is the best place to make the competency finding because the trial judge is the only judge to observe defendant at the time of waiver. As competency findings are not a precise science, federal courts are at a significant disadvantage when reviewing a competency finding from a cold record, as demonstrated by the present case.

Deferring to state court competency findings under section 2254(d) is consistent with this Court's precedents. They stress that whether a question is factual should be determined by looking to which court is best suited to make the finding, whether the question has historically been treated as factual, and whether deferring to state courts will threaten the underlying right. All of these factors favor protecting state court findings under section 2254(d).

The Ninth Circuit improperly presumed against the validity of Moran's waiver. In federal habeas corpus there is a presumption of correctness that protects final judgments, including waiver of constitutional rights. This overrides the presumption against waiver advocated by the Ninth Circuit.

There is no difference between competency to stand trial and competency to waive rights. Historically, this Court has treated these two issues under the same basic question: whether the defendant understands the nature and consequences of what is happening to him. Whatever differences exist in the exact nature of the two inquiries are minimal given the inexact nature of psychiatry and psychology.

The standard formulated by the Ninth Circuit helps no one while imposing substantial costs. It is derived from a much too broad reading of a *per curiam* decision of this Court. Given the inexact nature of the mental health sciences, the Ninth Circuit's standard will not provide defendants with any additional real protection. What the new standard will do, however, is burden trial courts with unnecessary additional competency hearings.

ARGUMENT

I. The issues addressed in this brief are fairly included in the questions set forth in the petition.

Supreme Court Rule 14.1(a) states that "[o]nly the questions set forth in the petition, or fairly included therein, will be considered by the Court." The argument *amicus* presents, that the Ninth Circuit should have deferred to the Nevada court's finding that Moran was competent, satisfies this rule.

The question presented in the petition for certiorari is "[w]hether federal courts can require a heightened standard of mental competency when a state criminal defendant (1) enters a plea of guilty, and (2) waives counsel." Pet. i.

Amicus' argument is fairly included within this question. The Ninth Circuit's finding that the Nevada court should have used a higher standard of competence allowed it to ignore the state court's competency finding

and avoid deciding whether it should have deferred to this finding. See Pet. App. A 15-18. Therefore, the deference issue is necessarily intermixed with the standard issue.

The deference issue was also directly raised in the certiorari petition. Part III of the petition argued that the Ninth Circuit's disregard of state court findings was another reason for granting certiorari. Pet. 19-21. While this issue was not explicitly asserted in the questions presented portion of the certiorari petition, this issue certainly was raised by petitioner as a reason to grant the certiorari petition.

Rule 14.1(a) is meant to inform. It serves two important purposes: 1) providing the respondent with notice of issues on which certiorari is granted, and 2) assisting this Court in deciding which cases will be granted certiorari. *Yee* v. *Escondido*, 118 L. Ed. 2d 153, 170-171, 112 S. Ct. 1522, 1523 (1992). As the petition made this Court and respondent aware of objections to the Ninth Circuit's disregard of the state court findings, arguments related to this subject may be addressed in the present case.

II. A state court's finding of competency to plead guilty and waive counsel is a presumptively correct finding of fact.

Two Nevada courts found that Moran was competent to discharge counsel and plead guilty. The trial court made an implicit competency finding when it engaged in a colloquy with defendant and accepted his guilty plea and discharge of counsel. The state postconviction court made an explicit finding of competence in its opinion denying Moran's application for relief. See Pet. App. D 7-8. The Ninth Circuit ignored both of these findings. It found that the trial court should have held a competency hearing before accepting the guilty plea, because it should have had a good faith doubt about Moran's competency to waive his rights. Pet. App. A. 12-13. The Ninth

Circuit chose not to defer to the postconviction court's finding because the federal court believed that the state court applied the wrong legal standard of competency. See *id.*, at 16-17.

These conclusions are wrong. Any finding of competency to waive rights is a finding of fact under 28 U. S. C. § 2254(d). As the Nevada courts applied the correct standard of competency, see part IV, *post*, at 19-24, the Ninth Circuit could not ignore their findings, but instead had to defer to them.

A. The Better Forum.

The question of whether a state court finding is a finding of fact protected under 28 U. S. C. § 2254(d) is a practical one. "[T]he practical truth [is] that the decision to label an issue a 'question of law,' a 'question of fact,' or a 'mixed question of law and fact' is sometimes as much a matter of allocation as it is analysis." *Miller* v. *Fenton*, 474 U. S. 104, 113 (1985). Crucial to this allocation is whether the state court is better suited to make the relevant finding than a federal court. See *id.*, at 114. As state courts are much better positioned to decide if a defendant is competent to waive rights, federal habeas courts should defer to state competency findings under section 2254(d).

State courts are best suited to determine competency because they decide the issue first. This Court has recognized "the difficulty of retrospectively determining an accused's competence to stand trial." *Pate* v. *Robinson*, 383 U. S. 375, 387 (1966). A court reviewing the competence of a defendant in a prior proceeding will have to extrapolate from a cold record. This will disadvantage any experts the reviewing court relies upon, and most importantly, deprive it from personally observing defendant. See *ibid*. The ability to observe a witness gives a trial court a crucial advantage over federal habeas corpus courts in determining the credibility of witnesses. " 'In

doubtful cases the exercise of his power of observation often proves the most accurate method of ascertaining the truth . . . . How can we say the judge is wrong?' " *Marshall* v. *Lonberger*, 459 U. S. 422, 434 (1983) (quoting *United States* v. *Oregon Medical Society*, 343 U. S. 326, 339 (1952)).

Similar analysis applies to a state court's competency finding. Psychiatry is an inexact science. See *Medina* v. *California*, 120 L. Ed. 2d 353, 367, 112 S. Ct. 2572, 2580 (1992). Psychiatric diagnosis is primarily " 'medical "impressions" drawn from subjective analysis and filtered through the experience of the diagnostician.' " *Ibid.* (quoting *Addington* v. *Texas*, 441 U. S. 418, 430 (1979)). Thus one psychiatric expert has testified to his doubt that psychiatrists and psychologists are better qualified than lay individuals to determine whether a person was sane at the time a crime was committed. See *People* v. *Jones*, 811 P. 2d 757, 763 (Cal. 1991).

The question of competency is just as uncertain. The best evidence will frequently be the defendant's demeanor. Therefore, observing a person's behavior can "obviate 'the need for extensive reliance on psychiatric prediction concerning [defendant's] capabilities.' " *Drope* v. *Missouri*, 420 U. S. 162, 179 (1975). While an " 'uncontradicted . . . history . . . of pronounced irrational behavior' " may require psychiatric inquiry, see *ibid.* (quoting *Pate*, *supra*, 383 U. S., at 385-386), in most instances, the trial court's observations will be sufficient to support a competency finding. In those rare instances where psychiatric testimony is needed, the psychiatrists testifying before the state court will have the substantial advantage of having observed defendant at the relevant time his competency was in question. See *Pate*, *supra*, 383 U. S., at 387 (psychiatrists disadvantaged when making observations from a cold record).

In the present case, two Nevada courts found Moran competent to discharge counsel and plead guilty. The

postconviction court made a specific finding on this issue. See Pet. App. D 6. The state trial court implicitly made a similar finding when it accepted Moran's discharge of counsel and guilty plea. The trial court's finding provides the strongest demonstration that state courts are the best forum for determining competency.

Unlike any other judge in the present case, the trial judge was able to observe Moran at the time he waived his rights. The record demonstrates that Judge Leavitt was concerned about Moran's ability to make a knowing and intelligent waiver of his rights. The judge engaged in an extensive colloquy with the defendant and attempted to persuade him not to waive counsel. See Pet. 6. He made this decision aided by psychiatrists' reports indicating that Moran was competent to stand trial.

The federal district court recognized these advantages and deferred to Judge Leavitt's decision. One of the most important reasons for this deference was the fact that the trial court personally observed Moran when he made his plea. "Moreover, the record does not reflect that the judge, the prosecutor, or the two attorneys initially appointed to represent Moran felt that his mental faculties were impaired because of the medication he had consumed." Pet. App. B. 13-14.

The Ninth Circuit abandoned any notion that the trial court's decision warranted deference. Substituting its judgment for that of the trial court, it found that the trial court should have held a formal hearing on Moran's competency to discharge counsel and plead guilty. Pet. App. A 15. The Ninth Circuit dismissed the trial court's colloquy with Moran by noting that "[t]he transcript of the plea hearing shows that virtually all of Moran's responses to the court's questions were monosyllabic." *Id.*, at 13-14. The Ninth Circuit attempted to buttress this point by noting that Moran was on prescription medication at the time he made his plea. *Id.*, at 14.

This is precisely the type of cold reading from the record that this Court has condemned. "Title 28 U. S. C. § 2254(d) gives federal habeas courts no license to redetermine the credibility of witnesses *whose demeanor has been observed by the state trial courts but not by them.*" *Lonberger, supra*, 459 U. S., at 434 (emphasis added). The manner in which Moran made his "monosyllabic" responses will be the crucial factor in determining whether these responses demonstrated Moran's competency or incompetency. If Moran were glassy-eyed and made unintelligible, monotone responses to the questions, then his competency would be properly in doubt. If, however, he gave his answers in a normal tone and manner, then the colloquy becomes evidence of his competence. From a cold record a court "cannot now recreate his tone of voice or the gloss that personality puts upon speech." *Von Moltke* v. *Gillies*, 332 U. S. 708, 730 (1948) (Frankfurter, J., concurring). Only the trial judge can make this observation. No federal habeas courts can make this judgment.

This Court overturned a very similar finding of the Ninth Circuit for this same reason in *Demosthenes* v. *Baal*, 495 U. S. 731 (1990). There the Ninth Circuit granted a stay of execution to hold a hearing to determine whether Baal was competent to waive postconviction proceedings. *Id.*, at 734. The federal court granted this stay in spite of a finding by a Nevada postconviction court that Baal was competent to make the waiver. See *id.*, at 732-733. This Court vacated the stay, deferring to the findings of the Nevada court, which unlike the Ninth Circuit had personally observed Baal. "Indeed, because the Court of Appeals did not personally observe Baal, as the state court did, it had even less reason to overturn what is essentially a factual determination." *Id.*, at 737.

The other Nevada court that found Moran competent, the postconviction hearing court, is also more capable of determining competence than a federal habeas court. The court was made up of the three judges who formed

Moran's sentencing panel—Judges Fondi, Breen, and Leavitt. All of these judges had the advantage of having observed Moran at or near the time he made his plea. Judge Leavitt was the trial judge who took his plea and initially found him competent, while Judges Fondi and Breen were able to observe Moran at the penalty phase, which took place less than two months after Moran discharged his counsel and entered his guilty plea. See Pet. App. B 4, 6. This too is an advantage no federal court can enjoy and also warrants respect under section 2254(d).

Section 2254(d) does not only protect trial court findings. It protects all state courts. See *Sumner* v. *Mata*, 449 U. S. 539, 545-546 (1981). This is particularly true when federal habeas courts make their determination based upon the same record as the state court. While nontrial courts are not as well positioned to find competency as trial courts, they are nonetheless better positioned to rule on competency than federal habeas courts.

B. Competence and Precedent.

Holding that competency to waive constitutional rights is a question of fact is consistent with the rest of this Court's section 2254(d) precedent. Perhaps the closest this Court has come to deciding whether competency to waive is a finding of fact under section 2254(d) is in *Maggio* v. *Fulford*, 462 U. S. 111, 116-117 (1983) (*per curiam*). In that case, a state court finding of competency to stand trial was held to be a finding of fact under section 2254(d). It is an insignificant jump from concluding that competency to stand trial is a factual finding to holding that competency to waive is similarly factual. The *Maggio* Court simply asserted that a finding of competency to try warranted protection under section 2254(d). See *id*., at 117. The reasons it gave for holding that the state court's finding was supported by the record demonstrate the similarity between a finding of competency to try and competency to waive. Among the many reasons for

supporting the state court's finding, the *Maggio* Court placed importance upon the trial court's ability to assess the demeanor and credibility of defendant and the witnesses. See *id*., at 117-118. As credibility is similarly crucial to the competency to waive finding, see part II A, *ante*, at 6-10, this finding should also be protected under section 2254(d).

This Court protected another state court competency finding under section 2254(d) in *Demosthenes* v. *Baal*, 495 U. S. 731 (1990) (*per curiam*). Baal had been sentenced to death and wished to forego any postconviction proceedings. *Id*., at 732. A Nevada postconviction court held hearings and determined that he was competent to make the waiver. *Id*., at 732-733. The District Court refused to hold an evidentiary hearing on Baal's competence, but the Ninth Circuit stayed Baal's execution, finding that there was at least a minimal showing of incompetency that required a stay. *Id*., at 734.

This Court, relying upon section 2254(d)'s presumption of correctness, vacated the stay. "We have held that a state court's conclusion regarding a defendant's competency is entitled to" protection under section 2254(d). *Id*., at 735. The *Baal* Court did not distinguish between types of competency findings. It relied upon *Maggio*, a competency to try case, to support protecting a finding of competency to forego habeas. See *ibid*. If there is no difference between competency findings at the beginning and the end of the criminal justice process, then there is no reason to exclude competency to waive from the protection of section 2254(d).

Another case close to the present case is *Marshall* v. *Lonberger*, 459 U. S. 422 (1983). *Lonberger* involved a dispute over validity of a prior guilty plea that was admitted as evidence in defendant's murder trial. There was considerable disagreement between the defense and the prosecution over the historical facts regarding the voluntariness of the prior guilty plea. *Id*., at 426. Before

trial on the current charges, the trial court held a hearing on the voluntariness of the guilty plea. It examined the records surrounding the plea and defendant took the stand and testified about his plea that occurred three years earlier. See *id.*, at 428.

The *Lonberger* Court first divided the factual and legal issues raised by an attack on a guilty plea. The ultimate issue of voluntariness was a question of federal law, not of fact. *Id.*, at 431. But the facts surrounding the plea and the inferences drawn from them were protected by section 2254(d). *Id.*, at 431-432. The Court of Appeals had found that the factual record did not support the conclusion that the plea was intelligent. *Id.*, at 430-431. It recognized that it was disagreeing with the factual findings of a state court, but held that the Ohio court's findings were not " 'fairly supported by the records before them' " thus overcoming section 2254(d)'s presumption of correctness. *Id.*, at 430-431.

This Court did not disagree with the Sixth Circuit's division of factual and legal questions. The Sixth Circuit was reversed because it misapplied the "fairly supported" test to overcome a state court's fact findings. See *id.*, at 432. Although the opinion dealt with when a federal habeas court could disregard state findings of fact, *Lonberger* also demonstrated the great array of findings regarding guilty pleas that are protected under section 2254(d).

> "Thus, the *factual* conclusions which the federal habeas courts were bound to respect in assessing respondent's constitutional claims were the contents of the Illinois court records, the finding of the Ohio trial court that respondent was '*an intelligent individual*, well experienced in the criminal processes and well represented at all stages of the proceedings by competent and capable counsel in Illinois,' *supra*, at 428, and the similar conclusion of the Ohio Court of Appeals, and

> the inferences fairly deducible from these facts." *Id.*, at 435 (emphasis added).

If finding that a person was intelligent enough to plead guilty is a question of fact, then competence to plead guilty must be similarly factual. While competence and intelligence are not synonymous, they both address the same basic issue: a defendant's capacity to make a knowing and intelligent waiver of his rights.

The reasoning of *Lonberger* was applied to another case close to the present one in *Parke* v. *Raley*, 121 L. Ed. 2d 391, 113 S. Ct. 517 (1992). *Parke* dealt with the validity of a Kentucky procedure placing a shifting burden of production on defendant when attacking the validity of prior convictions in persistent felony offender proceedings. 121 L. Ed. 2d, at 400, 113 S. Ct., at 519. After holding that this procedure was constitutionally permissible, the *Raley* Court had to determine the validity of a prior guilty plea.

This Court reiterated the principle that "although 'the governing standard as to whether a plea of guilty is voluntary for purposes of the Federal Constitution is a question of federal constitutional law,' 459 U. S., at 431, questions of historical fact including inferences properly drawn from such facts, are in this context entitled to the presumption of correctness accorded state court factual findings under 28 U. S. C. § 2254(d)." *Raley*, *supra*, 121 L. Ed. 2d, at 407, 113 S. Ct., at 526 (quoting *Lonberger*, *supra*).

As in *Lonberger*, the *Raley* Court found that the factual determinations by the trial court were " 'fairly supported by the record' . . . ." 121 L. Ed. 2d, at 408, 113 S. Ct., at 527. As in *Lonberger*, this holding also demonstrated which findings were factual under section 2254(d).

> "The Kentucky Court of Appeals, reviewing the trial court's decision not to suppress the 1981 conviction, observed that respondent had an eleventh grade education, could read adequately, was represented by

counsel in the 1981 proceedings, *and was in no way mentally impaired when he entered his plea*." *Ibid.* (emphasis added).

If a defendant's lack of mental impairment is factual, then so must be his competence to waive his rights.

In *Miller* v. *Fenton*, 474 U. S. 104 (1985), this Court set out the analysis used to find out whether an issue was factual under section 2254(d). The most important principle, allocating the issue to the most capable court, see *id.*, at 114, strongly favors the state court. See part II A, *ante*, at 6-10. The other factors listed in *Miller* also support protecting the state courts.

In holding that voluntariness of a confession was not a question of fact, *Miller* emphasized the past treatment of this issue. Since this Court previously held that the question of voluntariness was a legal inquiry, the *Miller* Court felt bound by precedent. See *id.*, at 115. Competency to waive rights does not carry this historical baggage. The cases closest to deciding the status of a competency finding, *Lonberger*, *Maggio*, *Baal*, and *Raley*, support the protection of state competency findings.

The *Miller* Court also looked to the importance of credibility and demeanor. Where these factors are important to the resolution of the ultimate issue in question, then the state court finding is much more likely to be factual. See *id.*, at 116-117. Credibility and demeanor are essential to any finding on competency. See part II A, *ante*, at 8-10.

Another reason given by the *Miller* Court for finding voluntariness a mixed question of fact and law was that most confessions occur in a relatively secret environment. The guilty plea in *Lonberger*, the competency to stand trial determination in *Maggio*, and the determination of juror bias in *Wainwright* v. *Witt*, 469 U. S. 412 (1985) all "[took] place in open court on a full record." *Miller*, *supra*, 474 U. S., at 117. The secrecy frequently surrounding confessions increased the risk the federal right may be inadvertently frustrated by deferring to state courts. *Id.*, at 117. As the events surrounding the competency to plead finding take place in open court, the present case does not involve this risk of error.

The competency finding raised by the present case has all the features that warrant protection under section 2254(d) and none of the features that would make it a mixed question of fact and law. State courts are by far the best forums for resolving this issue, and federal habeas courts have significant disadvantages when reviewing these state court findings. Yet the Ninth Circuit paid little heed to these considerations when it vacated the state courts' findings.

III. The Ninth Circuit improperly burdened state findings of waiver.

The Ninth Circuit tipped its hand early. Near the beginning of the opinion it made the following observation about Moran's discharge of counsel and guilty plea. "Because such an extensive waiver of constitutional rights demands 'utmost solicitude' from courts, the court is required to indulge in every reasonable presumption against waiver of constitutional rights." Pet. App. A 4. This statement demonstrates the fundamental problem with the Ninth Circuit's analysis. While the sentiment quoted above may be proper for a court exercising direct review, see *Brady* v. *United States*, 397 U. S. 742, 748 (1970), it has no place in a federal habeas case.

The Ninth Circuit's presumption against the validity of Moran's waivers "improperly ignore[s] another presumption deeply rooted in our jurisprudence: the 'presumption of regularity' that attaches to final judgments, *even when the question is waiver of constitutional rights*." *Parke* v. *Raley*, 121 L. Ed. 2d 391, 404, 113 S. Ct. 517, 523 (1992) (emphasis added). The Ninth Circuit's failure to apply

this longstanding principle compromises its subsequent analysis of Moran's case.

Raley involved a burden shifting scheme regarding the validity of prior convictions. If the state proved the fact of a conviction beyond a reasonable doubt, then a presumption of regularity attached, shifting the burden to the defendant to produce evidence that his conviction was irregular. If such evidence was produced, then the burden shifted back to the state to show that the judgment was entered in a manner that protected defendant's rights. 121 L. Ed. 2d, at 400, 113 S. Ct., at 520.

On federal habeas corpus, the Sixth Circuit found that this scheme was unconstitutional when applied to prior guilty pleas. The Sixth Circuit thought it was compelled to reach this decision because of the statement in *Boykin* v. *Alabama*, 395 U. S. 238, 244 (1969) that the validity of the waiver accompanying a guilty plea cannot be presumed from silence. *Raley*, *supra*, 121 L. Ed. 2d, at 403, 113 S. Ct., at 523.

This Court distinguished *Boykin* because it involved direct review instead of habeas corpus. *Ibid*. As *Raley* was a habeas case, the presumption of regularity placed the case out of the reach of *Boykin*. 121 L. Ed. 2d, at 404, 113 S. Ct., at 523. A presumption of regularity that protects the ultimate validity of a guilty plea must also protect a finding of competency to waive rights. The finding of competency and the subsequent waiver, like the pleas in *Raley*, "became final years ago, and [Moran] now seeks to revisit the question of their validity . . . ." 121 L. Ed. 2d, at 403-404, 113 S. Ct., at 523.

As in *Raley*, the judgment Moran seeks to overturn has its own validity that creates a presumption of regularity. As Justice Black noted in the case that established the standard for waiver of rights:

> "It must be remembered, however, that a judgment can not be lightly set aside by collateral attack, even on *habeas corpus*. When collaterally attacked, the judgment of a court carries with it a presumption of regularity. Where a defendant, without counsel, acquiesces in a trial resulting in his conviction and later seeks release by the extraordinary remedy of *habeas corpus, the burden of proof rests upon him* to establish that he did not competently and intelligently waive his constitutional right to assistance of counsel.
>
> * * *
>
> "*If petitioner fails to sustain his burden, he is not entitled to the writ.*" *Johnson* v. *Zerbst*, 304 U. S. 458, 468-469 (1938) (emphasis added) (footnotes omitted).

In addition to ignoring precedent, the Ninth Circuit's approach also unfairly burdens state criminal justice systems. The Ninth Circuit used its presumption to support a finding that the trial court should have held a hearing to determine Moran's competency to waive his rights. Pet. App. A 4-5. Mandating such a hearing on the basis of an improper presumption unduly burdens a vital part of the state criminal process and will inevitably create needless friction between state and federal courts.

Guilty pleas serve several important purposes. As part of the plea bargaining process, the guilty plea is an integral part of one of the most important procedures in the criminal justice system. The plea bargain "is an essential component of the administration of justice." *Santobello* v. *New York*, 404 U. S. 257, 260 (1971). If all criminal charges went to trial, the criminal justice system would be overwhelmed, requiring many more courts. *Ibid*. If a person's competency to plead guilty can be attacked as easily as it has been in the present case, then prosecutors may be less willing to accept plea bargains. The resulting increased workload for prosecutors, defense counsel, and the courts should be avoided whenever possible.

The guilty plea is more than an administrative convenience.

"For some people, their breach of a State's law is alone sufficient reason for surrendering themselves and accepting punishment. For others, apprehension and charge, both threatening acts by the Government, jar them into admitting their guilt. In still other cases, the post-indictment accumulation of evidence may convince the defendant and his counsel that a trial is not worth the agony and expense to the defendant and his family." *Brady* v. *United States*, 397 U. S. 742, 750 (1970).

A guilty plea will also help the victims and their families. The quick resolution of the perpetrator's guilt will save them the trauma of the trial and the delays associated with the criminal justice system. This will both aid and speed the healing process for the victims.

A guilty plea should not be taken lightly. Therefore, it must be made knowingly and intelligently, and the record must show that these conditions were satisfied. See *Boykin* v. *Alabama*, 395 U. S. 238, 242 (1969). These requirements recognize the gravity of the guilty plea and protect it from abuse. There is no further need to protect those who plead guilty by taking every reasonable presumption against the validity of the defendant's act.

IV. The competence needed for waiver is the same as competence to stand trial.

The Ninth Circuit avoided paying deference to the fact findings of the Nevada courts by asserting that they used an improper standard for determining competency to waive constitutional rights. The Ninth Circuit held that the standard of competency enunciated in *Dusky* v. *United States*, 362 U. S. 402 (1960) was not sufficient to allow a waiver of rights. Instead, a person may waive counsel or plead guilty only if that person "has the capacity for 'reasoned choice' among the alternatives available to him." Pet. App. A 19. This new standard will provide

little further real protection for defendants, while adding another level of complexity to the criminal justice system. As neither the Constitution nor common sense requires it, the Ninth Circuit's standard should be rejected. Adopting the *Dusky* standard will protect the defendant's rights without further complicating our criminal procedure.

A. The Competence Standard.

The tradition of protecting incompetent defendants extends back to the common law. The common law prohibited the trial of incompetents because they could not make their defense. 4 W. Blackstone, *Commentaries* 24 (1769). Similarly, someone who became "mad" before arraignment could not be arraigned for a capital offense "because he is not able to plead it with that advice and caution that he ought." *Ibid*. There was no distinction between competency to stand trial and competency to plead. A person simply was or was not "mad."

Like the common law, this Court has not announced different standards of competency for these two parts of criminal procedure. In *Dusky* v. *United States*, 362 U. S. 402 (1960) (*per curiam*), this Court established the proper inquiry into a defendant's competency to stand trial: "whether [defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of factual understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Id*., at 402.

This Court has been more circumspect regarding competency to waive rights. While it has established general parameters for competency to waive rights, it has never announced a formal test in the way it did in *Dusky*. While no formal test has emerged, this Court has required an essentially similar level of competency for waiver.

An early hint of what was needed for waiver came in *Patton* v. *United States*, 281 U. S. 276 (1930). The *Patton*

Court decided the previously unanswered question of whether a defendant could waive his right to a 12-person jury. See *id.*, at 287. The *Patton* Court engaged in an extensive discussion on the propriety of allowing waiver of constitutional rights. Quoting from a leading state case favoring waiver, the *Patton* Court noted " '[a] plea of guilty to any indictment, whatever may be the grade of crime, will be received and acted upon if it is clear that the nature and effect of it are understood by the accused.' " *Id.*, at 303. If a person cannot understand the nature and effect of his waiver, then he would not be competent to make it. Thus *Patton* both implies and sets a standard of competency for waiver.

This Court again briefly referred to competency and waiver in *Johnson* v. *Zerbst*, 304 U. S. 458 (1938). *Johnson* established the knowing and intelligent requirement for waiver. See *id.*, at 464. The *Johnson* Court also understood that a necessary subset of this standard was that the defendant had to be competent to make this waiver. "This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused." *Id.*, at 465. Justice Black gave no further detail. A waiver simply was or was not made competently. The only clue as to what is competent is that Justice Black substituted competent for knowing. While no reason is given for this, the fact of the substitution is evidence of the similarity between the two requirements. This is also consistent with the *dicta* in *Patton* on the need for defendant to understand the nature and consequences of his guilty plea.

In *Carter* v. *Illinois*, 329 U. S. 173 (1946), this Court addressed the issue of whether someone could plead guilty without the advice of counsel. Upholding the waiver made by the defendant, the Court noted that "[f]acts bearing on his maturity or *capacity of comprehension* . . . are wholly wanting." *Id.*, at 178 (emphasis

added). It also recognized that a person can plead guilty so long as he is "fully advised of all its implications and *capable of understanding them*." *Id.*, at 174 (emphasis added). If a defendant satisfies these two requirements then it is not necessary to force counsel upon him before pleading guilty. *Id.*, at 174-175. Once again, competence is equated with understanding.

The focus on whether the defendant understands the consequences of his waiver continues today. "Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." *Brady* v. *United States*, 397 U. S. 742, 748 (1970). What is necessary is to insure that a defendant "does not plead guilty except with a full understanding of the charges against him and possible consequences of the plea . . . ." *Id.*, at 748, n. 6. This is the heart of the competency necessary to waive a constitutional right. If the defendant can understand the nature and consequences of the waiver, he is competent to waive. If he is then informed of the nature and consequences of the waiver, any waiver will be knowing and intelligent.

> "The record before us also supports the conclusion that Brady's plea was intelligently made. He was advised by competent counsel, he was made aware of the nature of the charge against him, and there was nothing to indicate that he was incompetent or otherwise not in control of his mental faculties; . . . ." *Id.*, at 756.

The *Brady* Court did not expand upon why the defendant was competent because it did not need to. As he could understand the nature and consequences of his waiver, he was competent to make the waiver.

This is equivalent to the standard for competence to stand trial: "whether [the defendant] has a rational as well as factual *understanding* of the proceedings against him." *Dusky*, *supra*, 362 U. S., at 402 (emphasis added).

The wording varies, but the inquiry is the same: can the defendant understand what is happening to him?

Because waiver and trial are different parts of criminal procedure, the necessary questions are somewhat different. Competency to stand trial looks to defendant's understanding to help him consult with counsel, see *Dusky*, *supra*, 362 U. S., at 402, while the waiver question looks to understanding to inform the defendant of the consequences of his waiver. But the ultimate question is the same: does the defendant understand what is happening? Psychiatry and psychology are inexact sciences. See *Medina* v. *California*, 120 L. Ed. 2d 353, 367, 112 S. Ct. 2572, 2580 (1992). The subtle distinctions between these questions are irrelevant for such an inexact science.

Nevada was not alone when it equated competency to waive with competency to stand trial. In the federal system the standard for competency to stand trial is whether a defendant is "unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U. S. C. § 4241(a). In addition to being the equivalent of the constitutional standard for pleading guilty announced in *Brady*, *supra*, it is also equivalent to the standard for guilty pleas found in the Federal Rules of Criminal Procedure. Before accepting a guilty plea, a federal court must "determine that the defendant understands" the nature of his charge, and the rights he will give up by pleading guilty. Fed. R. Crim. P. 11(c). This is the same as insuring that the defendant understands the nature and consequences of his plea. Most federal circuit courts recognize that the rule 11 competency standard is the same as the *Dusky* standard. See part IV B, *post*, at 29. The existence of similar federal criminal procedure is strong support for the constitutionality of a state's procedure. See *Parke* v. *Raley*, 121 L. Ed. 2d 391, 406, 113 S. Ct. 517, 525 (1992).

Equating competency to stand trial and competency to waive does not mean that all questions of mental health

are the same. This Court has repeatedly recognized the futility of treating all competency questions the same. See *Medina* v. *California*, 120 L. Ed. 2d 353, 365, 112 S. Ct. 2572, 2579 (1992); see also *Drope* v. *Missouri*, 420 U. S. 162, 176-177 (1973); *Jackson* v. *Indiana*, 406 U. S. 715, 739 (1972).

These cases do not prevent equating competency to try with competency to waive. They deal with attempts to equate the standard for a not guilty by reason of insanity plea with competence to be tried. See, *e.g.*, *Medina*, *supra*, 120 L. Ed. 2d, at 365, 112 S. Ct., at 2579; *Drope*, *supra*, 420 U. S., at 176-177; *Jackson*, *supra*, 406 U. S., at 739. Competency and insanity are two different issues. They involve different inquiries and different levels of constitutional involvement. See *Medina*, *supra*, 120 L. Ed. 2d, at 365, 112 S. Ct., at 2579. This difference is much greater than the difference between two shades of the same question.

Equating the competency to try and competency to waive will also simplify our criminal procedure. A multiplicity of tests, each having their own subtle variations, can only lead to confusion and unnecessary error. Equating the two standards would have the added benefit of keeping in line with the traditional practice in this country of treating competency to stand trial "as the standard for all purposes of the criminal proceedings." See *Competence to Plead Guilty: A New Standard*, 1974 Duke L.J. 149, 155.

The trial is the " 'main event' " of our criminal justice system. See *Wainwright* v. *Sykes*, 433 U. S. 72, 90 (1977). Therefore, competency to try is a very grave issue. The trial involves numerous decisions that, while not as important as the decision to plead guilty, are at least as complex:

> "[H]e [the defendant] must decide, with the assistance of his counsel, such things as whether to plead insanity, temporary insanity, alibi, or some other affirmative

defense, and whether to take the stand. Furthermore, the defendant at trial faces more than decisions. For example, the demands of testifying and the rigors of submitting to cross examination both heavily tax the abilities of a marginally competent defendant." 1974 Duke L.J., at 169 (footnotes omitted).

Thus a finding that the defendant is competent to stand trial deserves respect. This very important issue is essentially the same as competency to waive and should be treated as such. There is no reason to divide the question of competency.

Due process is not a detailed code of criminal procedure. See *Carter* v. *Illinois*, 329 U. S. 173, 175 (1946). It is meant to protect defendants from fundamental injustice. See *Patterson* v. *New York*, 432 U. S. 197, 201-202 (1977). There is nothing fundamentally unjust about keeping one standard of competence.

B. Improper Standard.

The Ninth Circuit, betraying its distaste for waiver, established a different standard of competency to waive constitutional rights. Departing from this Court's traditional focus on whether defendant understands the nature and consequence of his waiver, see part IV A, *ante*, at 18-24, the Ninth Circuit will reject any waiver of counsel or guilty plea unless defendant "has the capacity for 'reasoned choice' among the alternatives available to him." Pet. App. A 19. The standard imposed by the Ninth Circuit on Nevada will give little extra protection to defendants while creating needless extra procedures that will inevitably burden waivers of rights.

The origin of the Ninth Circuit's standard is found in *Sieling* v. *Eyman*, 478 F. 2d 211 (CA9 1973). In *Sieling*, defendant had been found competent to stand trial, but a month after this finding decided to plead guilty. *Id.*, at 213. While the trial court briefly inquired into the defendant's understanding of the charge and consequences

of the plea, no further psychiatric examination was made. See *ibid*. Sieling attacked his conviction on federal habeas corpus on the ground that the trial court had never found him competent to plead guilty. He asserted that the finding of competency to be tried did not support competency to plead guilty. *Ibid*.

The Ninth Circuit accepted Sieling's argument. It found support for it in *Westbrook* v. *Arizona*, 384 U. S. 150 (1966). The *Sieling* Court held that *Westbrook* recognized "a distinction between a defendant's mental competency to stand trial, and his competency to waive his right to counsel at trial." 478 F. 2d, at 213. According to the Ninth Circuit, this was derived from the *Westbrook* Court's holding that the trial court's finding that the defendant was competent to assist counsel in his defense was not enough to prove that Westbrook was competent to waive his right to counsel. *Ibid*.

The *Sieling* Court felt that it was necessary to look further before finding competency to waive. Waiver, particularly when a guilty plea was involved, was a serious matter that required careful attention by the courts. See *id*., at 213-214. A competency to try hearing did not go far enough because it did not address the separate issue of competence to waive. *Id*., at 214. Therefore, further inquiry was necessary.

The Ninth Circuit relied upon *Westbrook* to require further scrutiny and a higher standard of competence. As the *Westbrook* Court had required a further inquiry into the defendant's competence to waive counsel after a finding of competence to try, "the trial court must look further than the usual 'objective' criteria in determining the adequacy of a constitutional waiver." *Ibid*. While the *Westbrook* Court did not enunciate a new standard, "it is reasonable to conclude from the Court's language that the degree of competency required to waive a constitutional right is that degree which enables him to make decisions of very serious import." *Id*., at 214-215. The *Sieling* court

then created its new standard, the "reasoned choice" standard used by the Ninth Circuit in the present case. This standard was not derived from any decision of this Court, but instead was taken from a dissent in an earlier Ninth Circuit case, *Schoeller* v. *Dunbar*, 423 F. 2d 1183, 1194 (1970) (Hufstedler, J., dissenting). 478 F. 2d, at 215.

The Ninth Circuit's holding in the present case that Nevada applied the wrong standard of competency rests entirely upon *Sieling*'s interpretation of *Westbrook*. The court below cited only its own cases in support of imposing the higher standard on Nevada. See Pet. App. A 19. These cases are part of a long string of Ninth Circuit authority that runs back to *Sieling*. *Sieling* is the only case in this line that relies on a Supreme Court decision to impose the reasoned choice standard. See *Harding* v. *Lewis*, 834 F. 2d 853, 856 (CA9 1987); *Chavez* v. *United States*, 656 F. 2d 512, 518 (CA9 1981); *Sailer* v. *Gunn*, 548 F. 2d 271, 275 (CA9 1977); *United States* v. *Moore*, 599 F. 2d 310, 313 (CA9 1979); *Sieling*, *supra*, 478 F. 2d, at 214-215.

Westbrook v. *Arizona*, *supra*, is too weak to support *Sieling*'s holding. *Westbrook* is a *per curiam* opinion remanding a case back to the Arizona Supreme Court for re-examination in light of *Pate* v. *Robinson*, 383 U. S. 375 (1966). 384 U. S., at 151. The only facts stated by the *Westbrook* Court are that "[a]lthough petitioner received a hearing on the issue of his competence to stand trial, there appears to have been no hearing or inquiry into the issue of his competence to waive his constitutional right to the assistance of counsel and proceed as he did, to conduct his own defense." *Id*., at 150. The Court next quoted from *Johnson* v. *Zerbst*, 304 U. S. 458, 465 (1938) on the importance of ensuring that waiver of counsel was intelligent and competent. 384 U. S., at 150. The *Westbrook* Court then concluded its analysis with a one-sentence holding. "From an independent examination of the record, we conclude that the question whether this

'protecting' duty was fulfilled should be re-examined in light of our decision this Term in *Pate* v. *Robinson*, 383 U. S. 375." 384 U. S., at 151.

Pate v. *Robinson* did not create any new or higher standard of incompetency. *Robinson* dealt with when a defendant had to be given a hearing on his competency to stand trial. *Robinson*, *supra*, 383 U. S., at 377. Robinson had a long history of severe mental illness. See *id*., at 378-381. In spite of this, the trial court made no effort to hold a competency hearing. The prosecution attempted to justify this by asserting that Robinson waived his right to a competency hearing by failing to ask for one. This Court dismissed this defense, holding that an incompetent person cannot waive a right to a competency hearing. *Id*., at 384. The state's failure to hold a competency hearing *sua sponte* in light of Robinson's history of irrational behavior violated due process. *Id*., at 385.

If it meant to create a new standard, the *Westbrook* Court would have announced it. Remanding a case back to a state court because it applied an improper standard of competency without telling the lower court the proper standard to apply would have been illogical and unfair. When a lower court applies the wrong standard, this Court will tell the lower court what the proper standard is. See, *e.g.*, *Dusky* v. *United States*, 362 U. S. 402 (1960) (announcing proper standard for competency to try when trial court used an improper standard).

What is more likely is that the *Westbrook* Court was dissatisfied with the factual findings of the trial court. This would explain its reference to an independent examination of the record and the remand in light of *Robinson*. If some serious incident demonstrating incompetence occurred between the competency hearing and Westbrook's decision to represent himself, then the trial court should have held another competency hearing.

The *Sieling* Court read too much from a very brief, cryptic opinion. *Westbrook* is a *per curiam* decision that

announced no new standard, and has not been cited in any subsequent decision of this Court. The Ninth Circuit should not be allowed to read so much into this short opinion.

Whatever its value, *Westbrook* does not apply to the present case. In *Westbrook* there was apparently neither a hearing nor an inquiry into the defendant's competence to represent himself. 384 U. S., at 150. In the present case, there was an inquiry into Moran's competence to waive. The trial court engaged in an extensive canvass with Moran before accepting his waiver, see Pet. 6., and Moran had his competence to waive reviewed in his state postconviction hearing. See Pet. App. D 7-8.

The best way to approach *Westbrook* is to limit it to its facts. Where a defendant's competence is already suspect and not even an inquiry is made on his competence to represent himself, then he has been deprived of due process. It should not, however, be allowed to alter the law of competency as the Ninth Circuit would have it.

The Ninth Circuit should not be able to force this view on a state judiciary. Due process

> "has never been perverted so as to force upon the [fifty] States a uniform code of criminal procedure. Except for the limited scope of the federal criminal code, the prosecution of crime is a matter for the individual states. . . . It is for them, therefore, to choose the methods and practices by which crime is brought to book, so long as they observe those ultimate dignities of man which the United States Constitution assures." *Carter* v. *Illinois*, 329 U. S. 173, 175 (1946).

Adopting the *Dusky* standard for competence to waive rights does not offend those ultimate dignities assured by the Constitution. The *Dusky* standard protects the right not to be tried while incompetent, a right as old as the common law. See *Medina* v. *California*, 120 L. Ed. 2d 353, 364, 112 S. Ct. 2572, 2577 (1992). It has also been

adopted by a substantial majority of the other federal circuits as the standard of competency to plead guilty. See *Allard* v. *Helgemoe*, 572 F. 2d 1, 3-4 (CA1 1978); *Malinauskas* v. *United States*, 505 F. 2d 649, 654 (CA5 1974); *United States* v. *Harlan*, 480 F. 2d 515, 517 (CA6 1973); *United States ex rel. McGough* v. *Hewitt*, 528 F. 2d 339, 342, n. 2 (CA3 1976); *United States* v. *Simmons*, 961 F. 2d 183, 187 (CA11 1992); *Wolff* v. *United States*, 430 F. 2d 443, 444 (CA10 1970); *Butler* v. *United States*, 384 F. 2d 522, 523-524 (CA8 1967). *United States* v. *Collins*, 949 F. 2d 921, 927 (CA7 1991). Only the D.C. Circuit has joined the Ninth Circuit in rejecting *Dusky* as the test for competency to plead guilty. See *United States* v. *Masthers*, 539 F. 2d 721, 726, n. 30 (CA D.C. 1976) (en banc).

In addition to being unpopular, the Ninth Circuit's test is also unnecessary. Given the inexact nature of psychiatry, see *Medina*, *supra*, 120 L. Ed. 2d, at 367, 112 S. Ct., at 2580, there is no reason to have two different tests for two issues that are so similar. There may be difference between a "capacity for 'reasoned choice' among the alternatives available to him," Pet. App. A 19, and a rational and factual understanding of the proceedings, *Dusky*, *supra*, 362 U. S., at 402, but the difference is minimal. It is unreasonable to expect the mental health sciences to make such a fine distinction.

While the difference between the two standards may be minimal, the impact of having more than one standard of competency will be significant. When a defendant is examined for competency to stand trial, he will not be examined for his competency to plead guilty because at this stage of the proceedings most defendants have not yet decided whether to plead guilty. See, *e.g.*, Pet. App. A 20-21. Therefore, under the Ninth Circuit's new standard a second competency hearing would have to be held if defendant chose to waive a right.

Given the minimal effective difference between the two standards, it is unlikely that a new hearing would afford defendants any real protection. The Constitution is meant to protect our fundamental rights, not to promote needless ritual. The Ninth Circuit's standard does no more than add further burden to a legal system already sagging under the weight of procedure.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

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Respectfully submitted,

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